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EXAMINER				
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT A. HEIBERGER

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Appeal 2009-010546  
Application 09/237,687  
Technology Center 3700

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Decided: September 24, 2009

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*Before:* WILLIAM F. PATE, III, JENNIFER D. BAHR, and MICHAEL W.  
O'NEILL, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

## STATEMENT OF THE CASE

Robert A. Heiberger (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1, 5, 7, and 9. The Examiner has indicated that claims 34 and 35 are allowable. No other claims are pending in the application. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

### *The Invention*

Appellant's claimed invention is directed to pop-type valve assemblies for fluid container closure mechanisms. Spec. 1:7-8.

Claim 1, reproduced below, is the only independent claim and is representative of the claimed subject matter.

1. A closure for a container that is adapted to hold a product for dispensing, comprising:

(a) a cap member mountable to a container, said cap member having a product outlet passage and a sleeve defining said outlet passage that includes a guide member and a longitudinal slot along said guide member; and

(b) a valve body disposed for longitudinal movement within said sleeve between an open position to permit flow of product through said passage from said container and a closed position to prevent flow of product through said passage, said valve body constructed of a stiff yet resiliently bendable material and having an ear projecting radially outwardly and received in said slot during use to define a stop member for limiting movement of said valve body within said sleeve between the open and closed positions, said valve body rotatable within said sleeve with said ear configured such that, upon rotation, said ear will

act against said guide member to deform said valve body and become disengaged from the slot thereby to allow removal of said valve body from said sleeve upon longitudinal movement of said valve body relative to said sleeve.

### *The Rejection*

Appellant seeks review of the Examiner's rejection of claims 1, 5, 7, and 9 under 35 U.S.C. § 102(b) as being anticipated by Perlmutter (US 5,145,094, issued Sep. 8, 1992).

### SUMMARY OF DECISION

We REVERSE.

### OPINION

Appellant argues that the Examiner has erred in finding that Perlmutter anticipates the subject matter of claim 1, because Perlmutter's flange 41 is not an "ear configured such that, upon rotation, said ear will act against said guide member to deform said valve body and become disengaged from the slot thereby to allow removal of said valve body from said sleeve upon longitudinal movement of said valve body relative to said sleeve," as called for in claim 1. App. Br. 6-9.

The Examiner asserts that Perlmutter's flange 41 is an "ear," and that

[t]he elasticity/flexibility of the body and cap member will allow the functional recitation of "said ear will act against said guide member to deform said valve body and become disengaged from the slot thereby to allow removal of said valve body from said sleeve upon longitudinal

movement of said valve body relative to said sleeve.”

Ans. 3.

Accordingly, the issue raised in this appeal is whether Perlmutter’s flange 41 is configured such that, upon rotation, said flange 41 will act against arm 19a (the guide member) to deform plastic closure body 26 (the valve body) and become disengaged from the slot (defined between the arms 19a) thereby to allow removal of the closure body 26 (valve body) from said sleeve 16 upon longitudinal movement of closure body 26 (valve body) relative to the sleeve 16.

The claimed ear configuration at issue, which is described in the paragraph bridging pages 10 and 11 of the Specification, and depicted in Figure 11, includes a chamfered surface 80 extending from one end shoulder 78 to the radial outer edge 72 of the ear 70, such that the end shoulder 78 forms a wedge 82 for use in releasing the valve body. Specifically, when sufficient rotational force is exerted on the valve body, the wedge 82 engages a guide member 34 and slot edge 43 and applies a radially inward force against the valve sleeve 44 of valve body 30 to deform the valve sleeve radially inwardly, such that the ear 70, upon further rotation, is positioned radially inside the guide members 32, 34, thereby placing valve body 30 in a release position in which it can be disengaged from sleeve or duct 18. Spec. 13:10-19; figs. 11 and 13.

In contrast, Perlmutter’s flanges 41 are not provided with any particular configuration which will cause the flanges 41, upon rotation, to act against a guide member, such as arm 19a, to thereby cause radially inward movement of the flanges, and thus deformation of the closure body 26, to disengage the flanges 41 from the slots (defined between the arms 19a) to

allow removal of closure body 26 from the sleeve 16. Therefore, Perlmutter's flange 41 is not an "ear configured such that, upon rotation, said ear will act against said guide member to deform said valve body and become disengaged from the slot thereby to allow removal of said valve body from said sleeve upon longitudinal movement of said valve body relative to said sleeve," as called for in claim 1, as well as claims 5, 7, and 9, which depend from claim 1.

DECISION

The Examiner's decision is reversed.

REVERSED

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